

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.06.2018

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.R.P.(PD). No.250 of 2018
and C.M.P.No.1419 of 2018

T.Balan Petitioner

Vs.

P.Mani ... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and Decreetal Order dated 23.08.2017 made I.A.No.7882 of 2017 in O.S.No.6974 of 2015 on the file of the VIIIth Assistant City Civil Court, Chennai.

For Petitioner : Mr.Vaibhav R.Venkatesh

For Respondent : Mr.K.Mani

ORDER

The relief sought for in this revision petition is to set aside the fair and Decreetal Order dated 23.08.2017 made I.A.No.7882 of 2017 in O.S.No.6974 of 2015 on the file of the VIIIth Assistant City Civil Court, Chennai.

2. The revision petitioner filed a suit before the XIV Assistant City Civil Court, Chennai in O.S.No.3412 of 2013 against the respondent for permanent Injunction and the suit was decreed on 14.07.2015. Against which the respondent filed an appeal before the learned Principal judge, City Civil Court, Chennai in A.S.No. 257 of 2015 and the same is pending. In the meanwhile, the respondent filed a suit against the revision petitioner in O.S.No.6974 of 2015 before the VIII Assistant City Civil Court, Chennai.

3. During the pendency of the suit, the revision petitioner filed an Interlocutory application under Section 10 of the C.P.C. in I.A.No.7882 of 2017 in O.S.No.6974 of 2015 before the VIII Assistant City Civil Court, Chennai to stay the suit in O.S.No.6974 of 2015. The trial Court refused to stay the suit under section 10 of C.P.C. and dismissed the Interlocutory application on 23.08.2017.

4. Aggrieved against the order dated 23.08.2017, the revision petitioner is before this Court by way of the revision petition.

5. The main contention of the petitioner is that the suit property is a public pathway and he got decree in his favour. During the pendency of the appeal, the very same respondent filed an another suit on the subject matter of the property in O.S.No.6974 of 2015 for permanent Injunction. Therefore, the suit should be stayed under Section 10 of C.P.C., since the Judgment and Decree in O.S.No.3412 of 2013 is under appeal in A.S.No.254 of 2015. If the suit in O.S.No.6974 of 2015 is not stayed, it will lead to conflict of decisions by the Court on the same issue between the same set of parties.

6. Heard the learned counsel for the petitioner and the learned counsel for the respondent and perused the materials available on record.

7. As the first suit is filed by the revision petitioner in O.S.No.3412 of 2013 for permanent injunction for using the common passageway more fully described in the schedule mentioned therein in which the suit was decreed. Against which the respondent filed an appeal in A.S.No.254 of 2015 which is pending on the file of the learned Principal Judge, City Civil Court, Chennai.

8. During the pendency of the appeal, the respondent filed the suit in

O.S.No.6974 of 2015 for permanent injunction including the 3 feet wide 27 feet length private open space situated within the southern side boundary of the plaintiff's house exclusively owned and used by the plaintiff and leading to the Bajani Koil 2nd street, Vadapalani, Chennai 600 026 and more fully described in the schedule property there under. When the respondent filed the suit in very same manner against the petitioner in O.S.No.6974 of 2015 which is also pending for trial.

9. The second suit in O.S.No.6974 of 2015 is filed for permanent Injunction. Therefore, the decisions of one suit will not bind on the other suit. Since the plaintiff has not filed the suit for declaration, the said pathway as public pathway or exclusive pathway of the concerned parties. Under these circumstances, a decision in the subject matter of the suit in this Revision will not affect the decision of the appeal in A.S.No.254 of 2015 on the file of the learned Principal Judge, City Civil Court, Chennai. In the absence of any prayer for declaration significant finding on one suit will not affect the other suit.

10. This Court finds, there is no illegality or infirmity in the order passed by the trial Court and finds no merits in the revision petition.

11. In the result, the revision petition is dismissed. Consequently, connected Miscellaneous petition is closed. No costs.

11.06.2018

Index:Yes/No

Speaking order / Non speaking order

vum

To

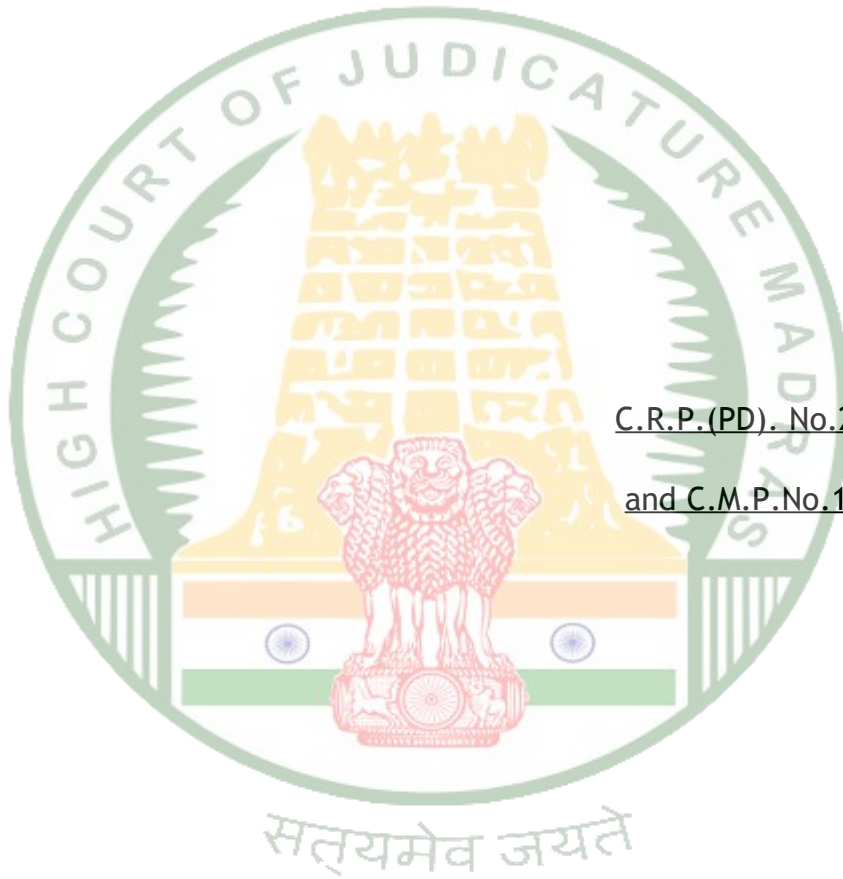
The VIIIth Assistant City Civil Court,
Chennai.



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P.VELMURUGAN, J.,

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